

Message Text

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ACTION ARA-10

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SUBJECT: DECREE LAW ESTABLISHES TAX ON COURT AWARDED COMPENSATION
FOR EXPROPRIATIONS OCCURRING FROM 1970 TO 1973

1. SUMMARY. NEW DECREE LAW HAS CAST DOUBT ON PREVIOUSLY
DECLARED INTENTION OF GOC TO PAY COMPENSATION TO OWNERS OF
PROPERTY EARLIER EXPROPRIATED. UNDERLYING REASONS, THRUST AND
LIKELY CONSEQUENCES OF THIS LEGISLATION NOT YET FULLY APPARENT.
EMBASSY WILL OBTAIN FURTHER INFORMATION FROM MINECONOMY. IN
MEANTIME, AGAINST THE POSSIBILITY THAT DEPARTMENT IS RECEIVING
INQUIRIES ABOUT THIS MATTER, WE SUBMIT FOLLOWING IN NATURE OF
STATUS REPORT. END SUMMARY.

2. DECREE LAW 754 PUBLISHED NOVEMBER 15, 1974 DECLARES
PROPERTIES EXPROPRIATED BY WHATEVER MEANS DURING
THE PERIOD
NOVEMBER 5, 1970 TO SEPTEMBER 11, 1973 TO BE PUBLIC UTILITIES
(UTILIDAD PUBLICA) AND AUTHORIZES THE PRESIDENT TO EXPROPRIATE
THEM. DL 754 PROVIDES STATE GUARANTEE, HOWEVER, OF PAYMENT OF
ANY COMPENSATION AWARD RESULTING FROM COURT DECISION. NEVER-
THELESS, ON DECEMBER 16, 1975 GOC PROMULGATED DL 1283 WHICH
DECLARES THAT LEGAL ACTIONS NOT ACTUALLY BEGUN BEFORE NOVEMBER
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10, 1975 ARE VACATED (EXTINGUIDAS), AND ALL PROPERTIES IN THIS

CATEGORY ARE NOW EXPROPRIATED. FURTHERMORE, APPARENTLY FUTURE COMPENSATIONS RESULTING FROM COURT ORDER ARE LIABLE TO AN 85 PERCENT TAX, WHICH, IN EFFECT, NULLIFIES THE COMPENSATION.

3. GOC OFFICIALS HAVE VARIETY OF EXPLANATIONS FOR AND LIKELY EFFECTS OF THIS NEW LEGISLATION. FOR EXAMPLE, MINECON SERGIO DE CASTRO AND JUNTA CHIEF OF STAFF ALVARO PUGA HAVE TOLD EMBASSY OFFICERS THAT INDIVIDUALS WHO HAD ALREADY REACHED SETTLEMENTS WITH THE PREVIOUS GOVERNMENT FOR THE LOSS OF THEIR PROPERTIES WERE TAKING ADVANTAGE OF DL 754 TO EXTRACT ADDITIONAL FUNDS FROM THE GOC. FURTHERMORE, THESE OFFICIALS POINT OUT THAT THESE COURT CASES TIE UP THE PROPERTIES INVOLVED, MAKING IT IMPOSSIBLE FOR THE GOC TO SELL, REINVEST IN, OR MERGE THEM. FINALLY, THAT THE OWNERS HAVE THE OPTION OF AGREEING TO AN OUT-OF-COURT SETTLEMENT WITH THE GOC WHICH WOULD NOT BE SUBJECT TO TAX.

4. IT IS UNCERTAIN HOW MANY CASES ARE AFFECTED BY DL 1283 OR HOW MUCH MONEY IS INVOLVED, BUT ONE PRESS REPORT MENTIONS AMOUNTS EQUIVALENT TO OVER 35 MILLION DOLLARS. SOCIEDAD NACIONAL DE AGRICULTURA (SNA) IS REPORTEDLY DEEPLY CONCERNED OVER THE APPROXIMATELY 180 AGRICULTURAL CASES STILL NOT RESOLVED AS OF NOVEMBER 11. BELIEVING THAT 85 PERCENT TAX WILL SIMPLY FORCE PEOPLE TO DROP CLAIMS, SNA IS SEEKING CLARIFICATION FROM GOC.

5. COMMENT: DL 1283 HAS DISTURBING IMPLICATIONS DUE TO APPARENT GOC UNWILLINGNESS TO ACCEPT RISK THAT JUDICIAL SYSTEM MAY DECIDE AGAINST IT. DL 1283 IN EFFECT DECLARES THAT THE PLAINTIFFS ARE SEEKING FINANCIAL GAIN AT THE EXPENSE OF THE STATE AND HAS THEREFORE MOVED TO NULLIFY WHATEVER RESULTS MIGHT OCCUR FROM THE COMPENSATION SUITS UNDER DL 754. IN ORDER FOR THE GOC TO PASS A LAW THUS RETROACTIVELY AFFECTING THE LEGAL RIGHTS OF INDIVIDUALS, THE DL HAD TO BE WRITTEN UNDER GOC'S AUTHORITY TO AMEND THE CONSTITUTION. WHILE THERE HAS BEEN SOME PRESS COMMENT AS TO THE POSSIBLE IMPACT OF THIS DL ON FOREIGN INVESTMENT, SINCE THE SITUATION REFERS TO EVENTS WHICH OCCURRED IN A SPECIFIC PAST TIME PERIOD (UNDER ALLENDE GOVERNMENT), IT APPEARS NOT TO HAVE IMPLICATION FOR DOMESTIC OR FOREIGN INVESTMENT OCCURRING AFTER THAT TIME, OR, APPARENTLY, THE MANY OUT-OF-COURT SETTLEMENTS ALREADY ARRIVED AT.

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6. INDIVIDUAL AND PRESS COMMENT ON THE LAW SEEN THUS FAR IS CONFUSED AND CONFLICTING. WE ARE THEREFORE SEEKING FURTHER INFORMATION FROM THE OFFICE WITHIN THE MINISTRY OF ECONOMY WHICH DRAFTED THE DECREE LAW.

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